

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEX ANG, et al.,

Plaintiffs,

v.

BIMBO BAKERIES USA, INC.,

Defendant.

Case No. [13-cv-01196-HSG](#)

**ORDER DIRECTING
SUPPLEMENTAL FILING IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL**

Re: Dkt. No. 217

Plaintiffs Alex Ang and Lynn Streit filed an unopposed motion for preliminary approval of class action settlement on December 13, 2019. *See* Dkt. No. 217. The Court held a hearing on the motion on February 13, 2020. *See* Dkt. No. 221. During the hearing on the motion for preliminary approval, the Court raised concerns about the scope of the absent class member releases contained in the proposed settlement agreement because they included claims that the Court did not certify in its order. *Id.* The parties subsequently filed a joint statement, attaching a revised settlement agreement for the Court’s consideration. *See* Dkt. No. 222, Ex. A (“revised SA”).

Having reviewed the revised SA, the Court remains concerned about the structure of the settlement and the lack of notice to absent class members. Although the parties revised the language of the releases, under the settlement absent class members are still releasing “any Claims for injunctive, declaratory or other equitable relief that were certified for class treatment in the Class Certification Order.” SA at §§ 1.14, 8, 8.2. Under the parties’ proposal, however, absent class members will not receive any notice of this release and will not have any opportunity to object or opt out of the class should they find the injunctive relief somehow deficient. *See* Dkt. No. 217 at 7–8. The parties cite *Grant v. Capital Mgmt. Servs., L.P.*, No. 10-CV-2471-WQH

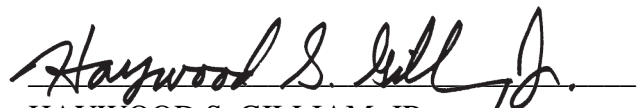
BGS, 2013 WL 6499698, at *6 (S.D. Cal. Dec. 11, 2013), in support of their contention that notice is not required under these circumstances. Yet critically, absent class members in *Grant* were not subject to *any* release of rights. It was *because* their legal rights remained unaffected that the court determined in its discretion that notice was not required. *Id.* (“In this case, the settlement agreement does not bind the unnamed class members The Court exercises its discretion and does not direct notice here because the settlement does not alter the unnamed class members’ legal rights.”); *accord Kim v. Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *4 (N.D. Cal. Nov. 28, 2012). By contrast, the current release is intended to strip absent class members of rights they otherwise would retain.

Additionally, the Court has identified some ambiguity in the injunctive relief provided for in the settlement. *See* SA at § 4.4. Defendant certified that “[s]oy flour [was] removed from ingredients list” for several products. *Id.* Part of Plaintiffs’ underlying allegations were that it was misleading to label products as “100% Whole Wheat” if they contained soy flour. However, there is not an accompanying assertion in the SA that soy flour is not—or is no longer—an ingredient in these products. Removing soy flour from the ingredients list if the products still contain soy flour does not solve the identified problem, but seemingly compounds it. Before the Court can properly evaluate the benefits of the proposed settlement, it needs more clarity on these product and label changes.

Accordingly, the Court’s inclination is still to deny preliminary approval. In addition to clarifying the changes made to products containing soy flour, to move forward the parties may either remove any release from the SA as to absent class members or may propose a class notice plan. The parties are **DIRECTED** to file a supplemental joint statement addressing these issues and discussing how they would like to proceed. The parties shall file a joint statement of five pages or less by March 3, 2020.

IT IS SO ORDERED.

Dated: 2/25/2020


HAYWOOD S. GILLIAM, JR.
United States District Judge